IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1212 OF 2003

WITH

WRIT PETITION NO.1213 OF 2003

M/s.Shreeji Agro International

& Ors. ...Petitioners

Versus

Shri Navin Kantilal Thakkar & Anr. ...Respondents

.....

Mr.Sandesh D.Patil for Petitioners.

Mr.P.P.Hudlikar with Mrs.Shilpa Joshi

for Respondent No.1.

Mr.A.S.Gadkari, A.P.P. for Respondent No.2.

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CORAM: A.M.KHANWILKAR, J.

SEPTEMBER 8, 2004.

P.C.

1. Heard Counsel appearing for the parties.

2. The only contention raised before me is that the complaint lacks allegation that the

Petitioners 2 and 3 herein, who are partners of Petitioner No.1 firm, were in-charge of, and were responsible to the firm for the conduct of the business of the firm. Besides, there is no allegation in the complaint as filed that Petitioners 2 and 3 herein had knowledge about the commission of the offence. It is contended, in view of the aforesaid deficiency in the complaint, the Trial Court has committed manifest error in issuing process. To buttress this position, reliance is placed on the decision of the Apex Court reported in **(2002) 7 SCC 655 in the case of Katta Sujatha (Smt.) vs. Fertilizers & Chemicals Travancore Ltd. & Anr.** and another decision reported in **(2001) 10 SCC 218 in the case of K.P.G. Nair vs. Jindal Menthol India Ltd.**

3. I shall first deal with the reported decisions of the Apex Court, which are pressed into service. In the case of **Katta Sujatha (Smt.) (Supra)**, the fact situation which obtained in that case as can be discerned from observations in Para 4 of that decision; that it was evidently clear that the appellant was in no way involved in any of

the transactions referred to in the complaint and it was not stated that she was in-charge of the business and was responsible for the conduct of the business of the firm. In the case of **K.P.G. Nair (Supra)**, the Apex Court has expounded the legal position as obtain on account of Section 141(1) of the Negotiable Instruments Act, which provides that not only the Company, but also every person who at the time when the offence was committed was in-charge of and was responsible to the company for the conduct of the business of the company, shall be deemed to be guilty of the offence and liable to be proceeded against and punished accordingly.

4. In the present case, in Paragraph 1 of the complaint, it is plainly asserted as follows:

> "The Accused No.2, 3 and 4 (accused Nos.2 & 3 - Petitioners 2 & 3 herein) are partners of the firm and carrying on business of manufacturing/grinding Aata from Wheat and supplying Aata to various customers from the business place, Bhiwandi, Dist.Thane."

5. To my mind, there is no infirmity in the view taken by the two Courts below that this assertion in the complaint was sufficient for issuance of process against the Petitioners 2 and 3 herein/accused Nos.2 and 3 respectively. The fact that Petitioners 2 and 3 were not in-charge of, and were not responsible to the firm for the conduct of the business of the firm, is a defence available to the said Petitioners and which fact will have to be established in evidence.

6. At this stage of the proceedings, no fault can be found with the order of the Trial Court issuing process against Petitioners 2 and 3. Although the firm has been impleaded as Petitioner No.1 in this proceedings, Counsel for Petitioners has fairly stated that Petition is not pressed on behalf of the firm and as mentioned earlier, the only argument canvassed before this Court is deficiency in the averment of the complaint as filed.

7. For the reasons recorded above, there is

no substance in these Petitions. The same are dismissed.

A.M.KHANWILKAR, J.